

Ronald Lovitt, Bar No. 040921
 J. Thomas Hannan, Bar No. 039140
 Henry I. Bornstein, Bar No. 75885
 Terence F. Young, Bar No. 069943
 LOVITT & HANNAN, INC.
 900 Front Street, Suite 300
 San Francisco, California 94111
 Telephone: (415) 362-8769
 Facsimile: (415) 362-7528
rl@lh-sf.com, jth@lh-sf.com, hib@lh-sf.com, tfylaw@earthlink.net

Attorneys for Defendants K-M Industries
 Holding Co. Inc.; K-M Industries Holding Co.
 Inc. ESOP Plan Committee; and CIG ESOP
 Plan Committee

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

THOMAS FERNANDEZ, LORA SMITH
 and TOSHA THOMAS, individually and on
 behalf of a class of all others similarly
 situated,

Plaintiffs,

v.

K-M INDUSTRIES HOLDING CO., INC.,
et al.,

Defendants.

) Case No. C06-07339 CW

) **[PROPOSED] ORDER GRANTING**
) **MOTION FOR SUMMARY**
) **JUDGMENT BY DEFENDANTS K-M**
) **INDUSTRIES HOLDING CO., INC., K-**
) **M INDUSTRIES HOLDING CO. INC.**
) **ESOP PLAN COMMITTEE and CIG**
) **ESOP PLAN COMMITTEE**

) Hearing Date: July 31, 2008
) Hearing Time: 2:00 p.m.
) Courtroom: 2, 4th Floor
) Judge: Hon. Claudia Wilken

Defendants K-M Industries Holding Co., Inc., K-M Industries Holding Co., Inc. ESOP Plan
 Committee and CIG ESOP Plan Committee ("KMH defendants") having moved this Court for an
 Order granting summary judgment on all of plaintiffs' claims against them, and the Court, having
 heard the arguments of counsel and having considered the papers filed in support and in opposition
 to the motion, and good cause having been shown,

1 IT IS HEREBY ORDERED AND ADJUDGED THAT:

2 1. Pursuant to Federal Rule of Civil Procedure 56, the KMH defendants are entitled to
3 summary judgment on each of plaintiffs' claims for relief;

4 2. The undisputed facts establish that each of plaintiffs' claims for relief were brought
5 more than six years after the dates of the transactions upon which plaintiffs' allegations of breach of
6 duty are based;

7 3. The undisputed facts also establish that there was no fraud or concealment on the part
8 of the KMH defendants related to the facts underlying the plaintiffs' claims for relief;

9 4. Each of plaintiffs' claims for relief are therefore barred by the provisions of 29
10 U.S.C. § 1113;

11 5. The KMH defendants are entitled to an award of their reasonable attorneys' fees and
12 costs pursuant to 28 U.S.C. § 1132(g);

13 6. The motion for summary judgment of the KMH defendants is hereby GRANTED as
14 to each of plaintiffs' claims for relief, and judgment on plaintiffs' claims shall be entered in favor of
15 the KMH defendants, dismissing this action against them and awarding the KMH defendants their
16 reasonable attorneys' fees and costs in defense of this action.

17 Dated: _____

Hon. Claudia Wilken
United States District Judge
Northern District of California